IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7070 of 1992
With
SPECIAL CIVIL APPLICATION No. 6981 of 1992
With
SPECIAL CIVIL APPLICATION No. 6786 of 1992
With
SPECIAL CIVIL APPLICATION No. 3023 of 1993
To
SPECIAL CIVIL APPLICATION No. 3025 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAVI KRIPALDAS - Petitioner(s)

Versus

PALITANA NAGAR PALIKA & 2 - Respondent(s)

==========

SCA No. 7070/1992

MR AJ SHASTRI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1, 3,
MR SIRAJ GORI,LD AGP for Respondent(s) : 2,

SCA No. 6981/1992

MR AJ SHASTRI for Petitioner(s) : 1,
MR SIRAJ GORI,LD AGP for Respondent(s) : 1,
MR DD VYAS, for Respondent(s) : 2,

RULE SERVED for Respondent(s) :3,

SCA No. 6786/1992

MR AJ SHASTRI for Petitioner(s) : 1,
MR SIRAJ GORI,LD AGP for Respondent(s) : 1,
MR DD VYAS, for Respondent(s) : 2,

RULE SERVED for Respondent(s) :3,

SCA No. 3023/1993

MR GH BHATT, for Petitioner(s) : 1,
RULE SERVED for Respondent (s) : 1,3,
MR SIRAJ GORI,LD AGP for Respondent(s) 2

SCA No. 3024/1993

MR GH BHATT, for Petitioner(s) : 1,
MR SIRAJ GORI,LD AGP for Respondent(s)

SCA No. 3025/1993

MR GH BHATT, for Petitioner(s) : 1,
MR SIRAJ GORI,LD AGP for Respondent(s)

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI
Date : 30/11/2005

ORAL JUDGMENT

1.Since common questions of law and facts arise in this group of petitions, they have been heard together and are disposed of by this common order.

2.Short facts leading to the petition can be noted at the outset.

2.1The petitioner in Special Civil Application No. 7070/1992 was alloted a shop on the first floor of shopping centre situated at Mahavir Petrol Pump constructed by Palitana Nagarpalika. This allotment was

made on 28-02-1992 pursuant to a resolution passed on 24-11-1991. The shop was given on lease for a period of 10 years on terms and conditions mentioned in the allotment letter. The Collector, Bhavnagar respondent no.2 herein however, by his order dated 30-08-1992 was pleased to direct the Municipality to restore the position obtaining prior to passing of the resolution in question. The petitioner has challenged the communication by the Patan Nagarpalika dated 18-09-1992 by which he is directed to restore the position prior to passing of the resolution. Since the order passed by the Collector on 30-08-19982 was not readily available with the petitioner, same was not produced along with the petition. A copy thereof, however, is tendered by learned advocate Shri Shashtri which is taken on record. Upon perusal of the order passed by the Collector, it can be seen that the stand of the Collector is that the rent to be paid by the petitioner was not adequate and the premium of Rs. 5,000/- was also insufficient. The Collector therefore, in exercise of powers under section 258 of the Gujarat Municipalities Act(hereinafter referred to as “the said Act”), was pleased to direct the Nagarpalika to restore the position of the property in question obtaining

prior to passing of the resolution of allotment.

2.2In Special Civil Application No. 6786/1992, the petitioner was allotted a shop in the very same shopping centre as in the previous matter in Palitana town by Palitana Nagarpalia. A resolution no. 231/91-92 was passed on 24-11-1991. The petitioner was alloted the shop on lease for a period of 10 years on the terms and conditions mentioned in the allotment letter. The Collector, Bhavnagar however, was pleased to pass an order on 30-08-1992 directing the Municipality to restore the position obtaining prior to passing of the resolution. It is the case of the petitioner that the petitioner has been put in possession pursuant to the said resolution and he has not breached any condition of allotment.

2.3Special Civil Application No. 6981/1992 has been filed by four petitioners. They have been granted the plot in Palitana town of different sizes and description of which is available at Annexure-A collectively at page 12 to 15 of the petition. These plots have been granted to them on lease for a period of 11 months on the condition of payment of rent of Rs. 99/- per month. It

is the case of the petitioners that they have been put in possession of these plots pursuant to the resolutions passed by the Nagarpalika and the allotments issued in their favour. The Collector, Bhavnagar appears to have passed an order dated 29-08-1992 directing the Nagarpalika to restore the position obtaining prior to passing of the resolution for grant of such plots. This was conveyed to the petitioners by Nagarpalika by communication dated 18-09-1992. The petitioners have challenged the action taken by the Collector.

2.4In Special Civil Application No. 3023/1993, a piece of land admeasuring 80 sq. mtrs., near Sumeru Hotel has been granted to the petitioner on lease for a period of 10 years on the condition of payment of monthly rent of Rs. 50/- and premium of Rs. 2,000/-. The resolution was passed by the Nagarpalika in this regard on 20-10-1992. The Collector, Bhavnagar however, appears to have passed an order on 01-02-1993 directing the Nagarpalika to restore the position obtaining prior to passing of the resolution. This was conveyed to the petitioner by the Nagarpalika by communication dated 10-02-1993. the petitioner has challenged the stand taken by the

Collector.

2.5In Special Civil Application No. 3024/1993, the petitioner was alloted a plot of land admeasuring 80 sq. mtrs., near Sumeru Hotel on lease for a period of 10 years. The petitioner was required to pay monthly rent of Rs. 50/- and a premium of Rs.2,000/-. This was pursuant to resolution no. 257/92-92 dated 20-10-1992. The Collector, Bhavnagar however, appears to have passed an order on 01-02-1993 directing the Nagarpalika to restore the possession obtaining prior to passing of the resolution. This was conveyed to the petitioner by the Nagarpalika by communication dated 10-02-1993. The petitioner has challenged the stand taken by the Collector.

2.6 In Special Civil Application No. 3025/1993, the petitioner was alloted a plot of land admeasuring 80 sq. mtrs., near Sumeru Hotel on lease for a period of 10 years. The petitioner was required to pay monthly rent of Rs. 50/- and a premium of Rs.2,000/-. This was pursuant to resolution no. 256/92-92 dated 20-10-1992. The Collector, Bhavnagar however, appears to have passed an order on 01-02-1993 directing the Nagarpalika

to restore the possession obtaining prior to passing of the resolution. This was conveyed to the petitioner by the Nagarpalika by communication dated 10-02-1993. The petitioner has challenged the stand taken by the Collector.

3. All the learned advocates appearing for the petitioners contended that the petitioners were already handed over the possession of the shops/plots pursuant to the resolutions passed by the Nagarpalika. It was contended that they had not breached any of the conditions of the allotment. It was therefore, not open for the Collector to cancel the allotment especially after the resolution was put into effect. It was further contended that the Collector had no power under section 258 of the said Act to cancel the resolutions of the Nagarpalika, once the same was put into full effect. It was alternately contended that the order passed by the Collector was without giving any opportunity of being heard to the petitioners. It was contended that the orders passed by the Collector would adversely affect the petitioners and such orders could not have been passed without hearing them. It was further contended that the petitioners have been handed

over the properties in question since years and in all cases a period of 10 years which was maximum for which lease is granted are by now over. It was pointed out that by interim protection granted by this Court, implementation of the orders of the Collector was stayed and the petitioners were permitted to occupy the properties in question.

4. In support of the contentions, learned advocate for the petitioners have relied on several decisions of this Court.

4.1 Reliance was placed on the decision of this Court in the case of H.H. Parmar v/s. Collector, Rajkot reported in 1979(2)GLR 97 to contend that once the resolution of the Municipality was acted upon, same could not have been remanded by the Collector in exercise of power under section 258 of the said Act. The said decision was relied upon to further contend that the Collector could not have cancelled the allotment made in favour of the petitioners without giving any opportunity of being heard to them.

4.2 Reliance was placed on the decision of

Raghavbhai Arjanbhai and another v. Amreli Nagarpalika and another reported in 1994(1) GLH 470, to point that once the resolution of Nagarpalika was exhausted, same could not have been suspended by the Collector.

4.3 Reliance was placed on the decision reported in 1995(1) GCD 185 and 1996(1)GLH 276, to urge that before cancelling the orders passed in favour of the petitioners, the Collector should have granted a reasonable opportunity of being heard to them.

4.4 The learned AGP Shri Siraj Gori contended that under section 258(1) of the said Act, the Collector has wide powers to examine the legality of a resolution passed by the Municipality, of a decision taken and to pass appropriate consequential orders. He pointed out a Full Bench decision of this Court in the case of P.G. Chavda v. State of Gujarat & ors. reported in 1998(2) GLR 1048, wherein it was held that the power under section 258(1) of the said Act can be exercised to suspend the resolution of the Municipality even if the same has been acted upon.

5. From the materials on record and the submissions

made on behalf of the rival parties, it can be seen that the petitioners were granted leases for shops/plots for a limited period. In most cases, such leases were to extend for a period of 10 years. In one case, lease of the land was for a period of 11 months. In any case, the term for which initially the leases were granted by the Nagarpalika have come to an end. During the pendency of the petitions on account of interim orders passed by this Court, the petitioners have been protected against dispossession. In so far as the resolutions passed by the Nagarpalika is concerned and in so far as the action taken by the Collector in this regard is concerned, no useful purpose shall be served in deciding the legality of the actions taken primarily because the term for which the leases were granted by the Municipality to which the Collector objected is over since long.

6. However, certain issues of vital importance cannot be left undecided. As noted, the petitioners have been contending that it was not within the powers of the Collector to overrule the resolutions passed by the Municipality that too without hearing the petitioners.

7. There are two separate aspects of this arguments and same can be dealt with separately. Firstly, it can be examined whether the Collector enjoyed the power to inquire into the resolutions passed by the Municipality particularly when such resolutions have been acted upon and consequential allotments have also been made.

7.1 Section 258 of the said Act reads as follows :-

“258.(1) If, in the opinion of the Collector, the execution of any order of resolution of a municipality, or the doing of anything which is about to be done or is being done by or on behalf of a municipality, is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof and where the execution of any work in pursuance of the order or resolution of the munici0ality is already commenced or completed direct the municipality to restore the position in which it was before the commencement of the work.

(2) When the Collector makes any order under this section he shall forthwith forward to the municipality affected thereby a copy of the order with a statement of the reasons for making it and also submit a report to the State Government alongwith copies of such order and statement.

(3) Against the order made by the Collector under sub-section (1) the municipality may prefer an appeal to the State Government within [thirty days] from the date on which it receives a copy of the order. The State Government may on such appeal being preferred rescind the order or may revise or modify or confirm the order or direct that the order shall continue to be in force, with or without modification, permanently or for such period as it may specify :

Provided that the order shall not be revised,

modified or confirmed by the State Government without giving the municipality reasonable opportunity of showing cause against the order."

7.2 From the reading of the provisions contained in section 258 of the said Act, it can be seen that under subsection(1) thereof, powers are vested in the Collector to suspend the execution or prohibit doing of anything by the Municipality if in the opinion of the Collector, the execution of any order or resolution of Municipality or doing of anything which is about to be done or is being done by or on behalf of the municipality, is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful. Subsection further provides that where the execution of any work in pursuance of the order of resolution of the Municipality is already commenced or completed, the Collector may direct the Municipality to restore the position in which it was before the commencement of the work.

7.3 Ample power therefore, lies with the Collector to suspend the execution of any resolution of the municipality or prohibit doing of a thing if circumstances mentioned there in are existing in the

opinion of the Collector. The subsection further empowers the Collector to direct the Municipality to restore the position in which it was before the commencement of the work where the execution of any work in pursuance of the order or resolution of the municipality is already commenced or completed.

7.4 In the present case,the Collector has exercised powers to direct the Municipality to restore the position in which it was before the allotment of shops/plots pursuant to the resolution passed by the Municipality. It is therefore, not possible to argue that the action of the Collector was without power or authority.

7.5 In view of the decision of the full bench in the case of P.G. Chavda v. State of Gujarat & ors.(Supra), it is also not possible to accept the contentions of the learned advocate for the petitioners that once the resolution was implemented, it was not open for the Collector to suspend the same. In-fact, power to suspend the resolution of the Nagarpalika is different from the power of the Collector to direct the Nagarpalika to restore the position as obtaining prior

to execution of work, if such a resolution has already been executed through completion of work and if in the opinion of the Collector, such a resolution or doing of the thing by the Municipality causes or is likely to cause injury or annoyance to the public or lead to a breach of the peace or is unlawful.

7.6 From the material on record it appears that the Collector was of the opinion that the allotments were made in favour of the individuals without fetching maximum possible price for the Nagarpalika and without calling any tenders or without auctioning the properties in question. If this were so, undoubtedly, the action of the Nagarpalika would be defective. As a public authority, it was not open for the Nagarpalika to distribute such largessee without offering the same to the members of the public at large and to ensure that best possible terms are ensured for the Nagarpalika. I have not expressed any conclusive opinion on this aspect of the matter since the conclusions of the Collector were without hearing the petitioners. This however, is vastly different aspect altogether which will be discussed in the later portion of the order. At this stage however, suffice it to say

that the Collector was well within his powers to initiate proceedings under section 258 of the said Act and consider either suspending or permanently prohibiting the implementation of the resolutions passed by the Nagarpalika and to direct the Nagarpalika to restore the position as obtaining prior to passing of such resolutions.

7.7 With respect to the question of requirement of hearing of the petitioners, however, the issues stand on different footing. The petitioners were beneficiaries of the resolutions passed by the Nagarpalika. Not only that the resolutions were passed in their favour, allotments were also made and such allotments were also acted upon. The petitioners had paid the amounts of premium demanded by the Nagarpalika and in some cases had also enjoyed the possession of the properties for a considerable period before the Collector decided to take the action of the Municipality under review. In-fact in the present facts and circumstances of the case, therefore, it would not be open for the Collector to rescind the resolution passed by the Municipality and direct restoration of the earlier position without hearing the

petitioners. On that count the Collector committed a legal error.

7.8 With these conclusions, if one reverts back to the situation obtaining presently, it would emerge that though the Collector had powers to pass the orders, same were passed in breach of the principles of natural justice. The petitioners were put in possession of the properties in question which possession they enjoyed under the protection of this Court. During the pendency of the petitions, the term for which the allotments were made have come to an end. By disposing of these petitions, therefore,in view of the observations made here-in-above, it is left open for the Collector to take appropriate action in accordance with law after hearing the petitioners if it is found that the Nagarpalika has passed subsequent resolutions or in any other manner extended the leases in favour of the petitioners. With these observations and directions, the petitions are disposed of accordingly. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi,J.)

(raghu)